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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,492	03/07/2002	Laurent Vidal	5725.0355-01	2642
22852	7590	10/03/2003		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 1300 I STREET, NW WASHINGTON, DC 20005			EXAMINER WRIGHT, SONYA N	
			ART UNIT 1626	PAPER NUMBER

DATE MAILED: 10/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/091,492	VIDAL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Sonya Wright	1626	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 68-75 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☒ Claim(s) 68-75 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____.  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

Claims 68-75 are pending in this application.

#### ***Election/Restrictions***

Applicant's election with traverse of the species of Preparation Example A on page 39 of the specification, 1H-7-amino-2,6-dimethylpyrazolo[1,5-b]-1,2,4-triazole hydrochloride, is acknowledged. The traversal is on the ground(s) that the Examiner has not shown that there would be a serious burden to examine all of the recited species of the claimed compound of formula (I'). This is not found persuasive because: It is pointed out that the restriction requirement is made under 35 U.S.C. 121. 35 U.S.C. 121 gives the Commissioner (Director) the authority to limit the examination of an application where two or more independent and distinct inventions are claimed to only one invention. The Examiner has indicated that more than one independent and distinct invention is claimed in this application and has restricted (limited) the claimed subject matter accordingly. Thus, the requirement to restrict the claims in this application is predicated on the fact that the claimed subject matter involves more than one independent and distinct invention. No where to Applicants argue to the contrary. No where do Applicants point out and give reasons why the claims do not involve independent or distinct subject matter. Accordingly, the restriction is proper. Moreover, it would constitute a burden to extend the search because separate search considerations would be involved in both the U.S. Patents and in the literature. The examination process following the search could easily result in different and thus burdensome considerations.

The restriction requirement here is predicated on the premise that the various compounds involved differ in structure and element so much so as to be patentably distinct, i.e. a reference which anticipated the elected compounds claimed would not even render obvious the others. Again, 35 U.S.C. 121 gives the Commissioner the authority to limit the examination of an application to a single invention. Applicant has not presented evidence that the examined subject matter is patentably indistinct from the non-examined subject matter. Nor have the even argued to the contrary. Moreover, the sheer number of variables, their huge possibilities, and the large number of permutations and combinations thereof result in compounds so numerous and diverse so as to be a burden to classify, search, and examine. Accordingly, the requirement to restrict is considered proper and is maintained. The search and examination of the application is directed to the following embodiment identified for examination only.

The following embodiment as depicted in claim 68 is identified for examination along with the elected embodiment: compounds of formula (I'a) wherein R'1 represents a hydrogen atom; a linear or branched C1-C20 alkyl radical, optionally substituted by 1 or 2 radicals R chosen from a halogen atom, a nitro radical, a cyano radical, a hydroxyl radical, an alkoxy radical, an aryloxy radical, an amino radical, an alkylamino radical, an acylamino radical, a carbamoyl radical, a sulphonamido radical, a sulphamoyl radical, an imido radical, an alkylthio radical, an arylthio radical, an aryl radical, a (C1-C4)alkoxy-carbonyl radical and an acyl radical; and an aryl radical optionally substituted by 1 or 2 radicals R as defined above;

R'2 represents a hydrogen atom; a C1-C4 alkyl radical; a C1-C4 monohydroxyalkyl radical; a C2-C4 polyhydroxyalkyl radical; a C1-C4 aminoalkyl radical a  $(\text{CH}_2)_p\text{-X-(CH}_2)_q\text{OR}'$  radical in which p and q are identical or different integers ranging from 1 to 3, R' represents a hydrogen atom or a methyl radical, and X denotes an oxygen atom or an NR'' group in which R'' represents a hydrogen atom or a methyl radical; a (C1-C4)alkoxy(C2-C4)alkyl radical; or a di(C1-C4)alkylamino(C1-C4) alkyl radical;

R'3 is the same as R1, i.e. R3 represents a hydrogen atom; a linear or branched C1-C20 alkyl radical, optionally substituted by 1 or 2 radicals R chosen from a halogen atom, a nitro radical, a cyano radical, a hydroxyl radical, an alkoxy radical, an aryloxy radical, an amino radical, an alkylamino radical, an acylamino radical, a carbamoyl radical, a sulphonamido radical, a sulphamoyl radical, an imido radical, an alkylthio radical, an arylthio radical, an aryl radical, a (C1-C4)alkoxy-carbonyl radical and an acyl radical; and an aryl radical optionally substituted by 1 or 2 radicals R as defined above.

The remaining subject matter of claims 68-75 is withdrawn from further consideration under 37 CFR 1.142(b) as constituting other patentably distinct inventions.

The withdrawn subject matter of claims 68-75 is properly restricted as said subject matter differs in structure and element from the elected subject matter so as to be patentably distinct therefrom, i.e. a reference which anticipated the elected subject matter would not even render obvious the withdrawn subject matter and fields of search are not co-extensive.

Claims 68-75 are objected to as containing non-elected subject matter. This objection may be overcome by limiting the claims to the elected subject matter identified supra.

***Specification***

The specification does not make reference to the continuing data in the first line on the first page. It is requested that on page 1 of the specification, before the first line, Applicant insert: -- This application is a divisional Application No. 09/212,578, now U.S. Patent 6,379,397.--

Appropriate correction is required.

The reference cited on the PTO-892 is included only to show the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sonya Wright, whose telephone number is (703) 308-4539. The examiner can normally be reached on Monday-Friday from 8:00 AM - 5:30 PM.

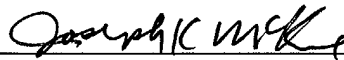
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Joseph K. McKane, can be reached at (703) 308-4537. The Unofficial fax phone number for this Group is (703) 308-7922. The Official fax phone numbers for this Group are (703) 308-4556 or 305-3592.

When filing a FAX in Technology Center 1600, please indicate in the Header (upper right) "Official" for papers that are to be entered into the file, and "Unofficial" for

draft documents and other communications with the PTO that are not for entry into the file of the application. This will expedite processing of your papers.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [joseph.mckane@uspto.gov]. All Internet e-mail communications will be made of record in the application file. PTO employees will not communicate with applicant via Internet e-mail where sensitive data will be exchanged or where there exists a possibility that sensitive data could be identified unless there is of record an express waiver of the confidentiality requirements under 35 U.S.C. 122 by the applicant. See the Interim Internet Usage Policy published by the Patent and Trademark Office Official Gazette on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist, whose telephone number is (703) 308-1235.



Joseph K. McKane

Supervisory Patent Examiner

Group 1600

Sonya Wright

September 26, 2003